

Filed 6/26/08 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2008 ND 120

State of North Dakota,

Plaintiff and Appellee

v.

Frederick Mayer,

Defendant and Appellant

No. 20080046

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce B. Haskell, Judge.

AFFIRMED.

Per Curiam.

Lloyd Clayton Suhr (appeared), Assistant State's Attorney, and Sarah Schaar (argued), third-year law student, 514 East Thayer Avenue, Bismarck N.D. 58501, for plaintiff and appellee.

Justin D. Hager, Richard B. Baer, P.C., 1110 College Drive, Suite 211, Bismarck, N.D. 58501-1225, for defendant and appellant.

State v. Mayer

No. 20080046

Per Curiam.

[¶1] Frederick William Mayer appeals from a criminal judgment entered on a conditional plea of guilty to charges of possessing marijuana, methamphetamine, and drug paraphernalia. Mayer argues the district court erred in denying his motion to suppress evidence because law enforcement officers did not have a warrant or a reasonable and articulable suspicion that he was engaged in criminal activity when they first encountered him, and because he did not voluntarily waive his rights under Miranda v. Arizona, 384 U.S. 436 (1966), before making incriminating statements. We conclude Mayer was not seized within the context of the Fourth Amendment when the law enforcement officers approached and questioned him, see, e.g., Brewer v. Ziegler, 2007 ND 207, ¶ 19, 743 N.W.2d 391; State v. Guscette, 2004 ND 71, ¶ 8, 678 N.W.2d 126, and the court's determination that Mayer voluntarily waived his Miranda rights is not manifestly against the weight of the evidence. See State v. Carlson, 318 N.W.2d 308, 311 (N.D. 1982). We affirm the criminal judgment under N.D.R.App.P. 35.1(a)(3) and (7).

[¶2] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Dale V. Sandstrom
Daniel J. Crothers
Mary Muehlen Maring